IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

INCOME TAX APPEAL NO. 80 OF 2002

The Commissioner of Income-tax,
Mumbai City V, Mumbai Appellant

vs.

M/s.Priceless Properties and
Development Pvt. Ltd. Respondent

Mr. K. R. Chaudhary i/b. Mr. H. D. Rathod for the appellant.

Mr.Sudhir Mehta i/b. M/s. S. P. Mehta & Co. for the respondent.

CORAM : R.M. LODHA &
J. P. DEVADHAR,JJ.

Date : 9th August 2004

P.C.:

Heard the learned counsel for the revenue.

2. The Tribunal in paragraph 4 of the impugned order observed thus:

> "4. We have carefully considered the rival submissions. Under the provisions of Income tax Act, "Income from house property" is a tax on the annual value of property after allowing such deduction as permissible under various

provisions of the Act. The provisions of section 23 lay down as to how this annual value should be determined,. There are two limbs of this provision. Section 23(1)(a) lays down that the annual value of any property should be deemed to be the sum for which the property might reasonably be expected to let from year to year. Provisions of section 23(1)(b) provide that where a property is let and the annual rent received or receivable exceeds the sum for which the property might reasonably be expected to let from year to year u/s. 23(1)(a) then annual value should be determined at the same amount as the annual rent received or receivable. In so far as provisions of section 23 (1)(a) are concerned, Hon'ble Supreme Court have in the case of Sheila Kaushish v. CIT (131 ITR 435)(SC) held that the sum for which the property might reasonably be expected to let from year to year cannot exceed the standard rent prescribed under the provisions of the Rent Control Act. In the instant case, according to the assessee, municipal rateable value was only Rs.9,332/- and, therefore, the standard rent could not exceed the annual rent received or receivable by the assessee. In this view of the mater, the annual of the property in this case has to be determined under the provisions of section 23(1)(b) only. As far as the provisions of sub-section (b) are concerned, the judgment of Hon'ble Bombay High Court in the case of J.K. Investors (Bombay) Ltd. (supra) is quite clear that no amount attributable to interest-free deposit received by the landlord can be added to the amount of rent actually received by the landlord. Thus looked from any angle, the order of the assessing officer officer as originally made cannot be faulted. In this view of the matter the impugned order u/s. 263 has to be considered as uncalled for. The same is accordingly cancelled. However, the assessing officer would be at liberty to find out standard rent in respect of the property in question for the assessment year under consideration and if it is found that the same exceeds the monthly rent of Rs. 10,000/-, the assessing officer would be at further liberty to substitute the amount of standard rent as annual value of the property."

3. The order of the Tribunal cannot be said to surfer from any error of law.

4. No substantial question of law arises.

5. Appeal is dismissed in limine.

(R. M. LODHA, J.)

(J. P. DEVADHAR,J.)